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EX PARTE OR LATE FILED

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Federal Communications Commission
Office of Secretary

February 25, 1998

EX PARTE PRESENTATION

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Re: *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121*

Dear Ms. Salas:

In accordance with the Commission's rules concerning ex parte presentations, I am submitting an original and two (2) copies of recent filings made with the Corporation Commission of the State of Oklahoma in connection with the above-referenced proceeding, including: (1) Southwestern Bell Telephone Company's February 13, 1998 Notice of Intent to File Section 271 Application and (2) the latest draft of the Brief in Support of the Application and supporting draft affidavits Southwestern Bell intends to file with the FCC to demonstrate its compliance with the Communications Act of 1934, as amended.

Please give me a call if you have any questions concerning the foregoing.

Very truly yours,

Todd F. Silbergeld

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BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF THE ATTORNEY GENERAL OF THE STATE OF OKLAHOMA, AT&T COMMUNICATIONS OF THE SOUTHWEST, INC., BROOKS FIBER COMMUNICATIONS OF OKLAHOMA, INC., BROOKS FIBER COMMUNICATIONS OF TULSA, INC., COX OKLAHOMA TELCOM, INC., MCI TELECOMMUNICATIONS CORPORATION, AND SPRINT COMMUNICATIONS, L.P. TO EXPLORE SOUTHWESTERN BELL TELEPHONE COMPANY'S COMPLIANCE WITH SECTION 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996.

CAUSE NO. PUD 970000560

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OF OKLAHOMA

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FEB 25 1998
Federal Communications Commission
Office of Secretary

SOUTHWESTERN BELL TELEPHONE COMPANY'S NOTICE OF INTENT TO FILE SECTION 271 APPLICATION

Pursuant to Order No. 419486 in this Cause, Southwestern Bell Telephone Company (Southwestern Bell) herewith provides notice of its intent to file an application for interLATA authority pursuant to Section 271 of the federal Telecommunication Act of 1996 (Act) at least ninety (90) days from the date of this filing.

Consistent with the Order described above, enclosed herewith is the latest draft of the Brief in Support of the application and supporting draft affidavits Southwestern Bell intends to file with the FCC to demonstrate its compliance with the federal Act.[1]

[1] Because they are voluminous and are already filed with the Commission, Southwestern Bell is not filing with this Notice another copy of the interconnection agreements that the Commission has approved between Southwestern Bell and various competitive local exchange companies. A listing of these agreements is attached to the affidavit of Charles Cleek. Nor is Southwestern Bell attaching a copy of its Statement of Terms and Conditions or amendments thereto, since such are on file with the Commission in Cause No. PUD 970000020. Any party requiring a copy of any of the foregoing documents should contact Roger K. Toppins.

Southwestern Bell reserves the right to revise its Brief, application and supporting documentation before filing it with the FCC, for instance, to present the most current facts available at that time or to address issues raised in proceedings before this Commission.

By filing this notice of intent to file an application for interLATA authority under Section 271 of the Act, Southwestern Bell does not waive any arguments it has with respect to the constitutionality of that and other sections of the Act which have been raised in *SBC Communications, Inc. v. Federal Communications Comm'n*, Civil Action No. 7:97-CV-163-X (U.S. Dist. Ct., Northern District of Texas). Nor is this filing intended to affect the status of Cause Nos. PUD 970000588 and 980000011 or deprive the right of Southwestern Bell Communications Services, Inc., doing business as Southwestern Bell Long Distance, to seek relief in those or other causes.

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CERTIFICATE OF MAILING

On this 13th day of February, 1998, a true and correct copy of the foregoing was mailed, postage prepaid, to:

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/Helen L. Scott

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Federal Communications Commission
Office of Secretary

VOLUME 1

TABS 1-6

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Draft — February 13, 1998

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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Oklahoma

CC Docket No. __________

To: The Commission

BRIEF IN SUPPORT OF APPLICATION BY SOUTHWESTERN BELL FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN OKLAHOMA

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__________, 1998

EXECUTIVE SUMMARY

This is Southwestern Bell's second request for interLATA relief in Oklahoma under section 271. A year ago, Southwestern Bell's first application garnered the support of the Oklahoma Corporation Commission ("OCC"), which concluded that Southwestern Bell had satisfied all its checklist duties and that approval of Southwestern Bell's application would intensify long distance competition and simultaneously push carriers such as AT&T to speed their entry into the local telephone business.

When it considered Southwestern Bell's application, the FCC found Southwestern Bell's filing had been made too early, because competitors were just planning or testing their local services. Now, a year later, local telephone competition in Oklahoma is solidly and irreversibly established. Carriers that were developing local services in 1997 are full-fledged competitors in 1998. They have won 14,000 access lines (at a bare minimum) directly from Southwestern Bell using a combination of resale, competitive fiber-optic networks, and unbundled network elements. In a largely rural state such as Oklahoma — which is nowhere near the top of competitors' priorities — these figures reflect a noteworthy degree of competitive penetration. At least one carrier, Brooks Fiber Communications ("Brooks"), is providing residential and business service in Oklahoma on a routine commercial basis predominantly over its own facilities. Two others, Dobson Communications ("Dobson") and Cox Communications ("Cox"), may be providing "Track A" service as well. Brooks' formal commencement of residential service, on October 31, 1997, is especially significant, given that the FCC relied on the "test" status of Brooks' residential service as grounds for denying Southwestern Bell's previous section 271 application for Oklahoma.

The steady development of competition in Oklahoma is just part of the growing competition throughout Southwestern Bell's local service areas. Southwestern Bell is quickly and cooperatively negotiating interconnection and resale agreements with all comers. In the five-state local service area of Southwestern Bell Telephone Company ("SWBT"), Southwestern Bell has signed 255 agreements; more than 200 of these agreements have been approved by the relevant state commission. In Oklahoma, Southwestern Bell has executed 32 agreements and received OCC approval of 17.

Southwestern Bell has spent nearly a billion dollars implementing the Telecommunications Act of 1996 ("Act") and bringing competition to local markets in its seven in-region states. This includes approximately $600 million to modify local networks to carry competitors' traffic and tens of millions of dollars to give competitors in Oklahoma exactly the same access to operations support systems ("OSSs") as SWBT's own retail personnel have — or other forms of access that may better fit a particular competitor's needs. SWBT's OSS interfaces are unmatched by those of any other incumbent local exchange carrier ("LEC"). One hundred and thirty-three competitors placed 772,000 service orders through SWBT's OSSs in 1997, without any backlogs. Just as important, Southwestern Bell personnel have gone beyond merely implementing competitors' requests; as a practical matter, Southwestern Bell is instructing new entrants, step-by-step, on how to become local telephone companies.

Every day, new entrants are demonstrating their ability to use the operating strategies contemplated by Congress. First, competitors can provide local service by simply placing a resale order with Southwestern Bell. Southwestern Bell has lost more than a half million local access lines to its competitors in this way, more than any other Bell company. In its five states, SWBT has lost more than 260,000 lines. This number includes 1600 business and 7200 residential lines in Oklahoma, which are being resold by eight different competitors.

Facilities-based competitors likewise are receiving what they need to pass traffic over Southwestern Bell's networks. Five competitive carriers in Oklahoma have a total of 15 physical collocation arrangements in place, comprising just some of the several hundred such arrangements in all the Southwestern Bell states. In Oklahoma alone, Southwestern Bell had provisioned 6200 interconnection trunks with competitive local exchange carriers ("CLECs") by the end of 1997, and more than 83 <u>million</u> minutes of local traffic had passed between Southwestern Bell and facilities-based CLECs in that state.

Competitors are ordering and using unbundled network elements where this is more cost-effective than resale or new construction. SWBT has provisioned hundreds of local loops in its five-state area. Moreover, Southwestern Bell is not standing on its legal right to insist that competitors combine network elements for themselves. To the contrary, it has voluntarily established terms and conditions for doing this work on behalf of competitors in Oklahoma, giving them yet another option for entering the local market.

To serve former Southwestern Bell retail customers over their own facilities, competing local carriers have had Southwestern Bell port nearly 5500 telephone numbers in Oklahoma; this establishes the bare minimum number of former Southwestern Bell access lines that have been lost to rival networks. Facilities-based competitors in Oklahoma also have reserved an additional 330,000 new numbers for assignment to subscribers. As yet another indication of operational competition, new entrants in Oklahoma have received 9000 white pages directory listings for their current customers. SWBT's white pages contain 177,000 listings for competitors' customers in the five-state service area.

Against this backdrop, there can be no doubt that the OCC was correct a year ago when it determined that Southwestern Bell had opened local markets in Oklahoma to competition and was eligible for interLATA relief. Indeed, the competitive experience in Oklahoma during the intervening year reinforces the OCC's findings and confirms that Southwestern Bell meets the standards of the 1996 Act as construed not only by the OCC, but also by this Commission.

First, Southwestern Bell has OCC-approved interconnection agreements with 17 different local competitors, including three — Brooks, Dobson, and Cox — that provide local exchange service to both residential and business customers and offer such service exclusively or predominantly over their own networks.

Second, the terms available to all potential local entrants in Oklahoma satisfy the "competitive checklist." Indeed, competitors have access to all checklist items in multiple ways. They may negotiate a customized agreement with Southwestern Bell, opt into an OCC-approved agreement between Southwestern Bell and a carrier such as Brooks, Dobson, Cox, AT&T, Sprint, or ICG, or utilize the standard offerings of Southwestern Bell's Statement of Generally Available Terms and Conditions, which has been in effect in Oklahoma for more than a year.

Third, when it provides interLATA services in Oklahoma, Southwestern Bell also will abide by the final regulatory requirement of section 271, compliance with the safeguards of section 272 and the Commission's implementing regulations.

Finally, Southwestern Bell's provision of interLATA services in Oklahoma would benefit the public. InterLATA markets are substantially more competitive in areas, such as SNET's service area in Connecticut, where they are open to all carriers. Where Bell companies have been barred, average consumers have no realistic alternative to paying the rates of AT&T, MCI/WorldCom, and Sprint. These carriers have raised their basic residential charges by more 20 percent since 1993, notwithstanding sharp cost reductions from new technologies and falling access charges. The major long distance carriers also have done their best to ensure that, while regulators are told about the best available rates, ordinary consumers are not.

It is accepted by virtually everyone, save the major incumbent long distance carriers themselves, that Southwestern Bell's entry into interLATA services in Oklahoma would benefit residential long distance customers. By a conservative estimate, immediate interLATA entry by Southwestern Bell in Oklahoma would result in the creation of an additional 10,000 jobs and an increase of more than $760 million in the gross state product by the year 2007. IntraLATA toll consumers would benefit as well, because Southwestern Bell will implement 1+ dialing parity when it enters the interLATA market.

Consistent with the 1996 Act, Southwestern Bell has done its part to open the local market in Oklahoma and throughout its region. Now the Commission should do its part to implement the congressional design. It should approve this application because Southwestern Bell has satisfied all the requirements for interLATA entry in Oklahoma and because doing so will bring consumers in Oklahoma the full benefits of competition.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Oklahoma	CC Docket No. __________

To: The Commission

BRIEF IN SUPPORT OF APPLICATION BY SOUTHWESTERN BELL FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN OKLAHOMA

Pursuant to section 271(d)(1) of the Communications Act of 1934, as added by the Telecommunications Act of 1996, Pub. L. No. 104-104, § 151(a), 110 Stat. 89 ("1996 Act" or "Act"), SBC Communications Inc. ("SBC") and its subsidiaries Southwestern Bell Telephone Company and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance ("SBLD") — collectively, "Southwestern Bell" — seek authority for SBLD to provide in-region, interLATA services (including services treated as such under 47 U.S.C. § 271(j)) in the State of Oklahoma.[1]

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[1]. Southwestern Bell intends to offer in-region, interLATA services in Oklahoma through SBLD. However, all references to SBLD should be understood to encompass any affiliate of SWBT that operates consistent with this application's representations regarding SBLD's future activities and statutory compliance.

The 1996 Act overturned regulatory compacts formed generations ago. As holders of exclusive franchises, incumbent local exchange carriers (incumbent "LECs") historically were the sole providers of local telephone services to their customers. They enjoyed freedom from local exchange service competition and the opportunity to obtain a reasonable return on their investment. In exchange, regulators determined LECs' ability to offer services and the prices they charged, requiring LECs to provide low-priced local service to all residential customers within their service area. The 1996 Act, however, established a new de regulatory compact, based on the principle that competition across all markets, not regulation, best serves the public interest. Congress required the states to allow local service competition. 47 U.S.C. § 253(a). Then it addressed economic and technical barriers to entry by ordering incumbent LECs affirmatively to assist competitors in entering local markets by providing interconnection, access to unbundled network elements, and services for resale. 47 U.S.C. §§ 251-252. At the same time, Congress authorized the opening of the interLATA market to full competition on a state-by-state basis, through section 271.

This is Southwestern Bell's second request for interLATA relief in Oklahoma under the new statutory regime. A year ago, Southwestern Bell sought relief on the basis that the local market in Oklahoma was open to competitors, although potential entrants were at that time in the early stages of offering services.[2] When Southwestern Bell filed its first application, it had

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[2] See Memorandum Opinion and Order, Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma, 12 FCC Rcd 8685 (1997) ("Oklahoma Order"), appeal pending, SBC Communications Inc. v. FCC, No. 97-1425 (D.C. Cir. argued Jan. 9, 1998).

received OCC approval of seven negotiated agreements with competitive local exchange carriers ("CLECs").[3] Southwestern Bell maintained that its approved agreement with Brooks Fiber Communications ("Brooks") entitled it to file for interLATA relief under section 271(c)(1)(A) because Brooks served twenty business customers over its own network, was providing "test" service to four employees on a resale basis, and had an effective tariff that generally offered facilities-based business and residential service in Oklahoma City and Tulsa. Oklahoma Order, 12 FCC Rcd at 8689-90, ¶ 7. In addition, to be sure it would be able to satisfy the alternative requirements of section 271(c)(1)(B) if necessary, Southwestern Bell had filed a Statement of Generally Available Terms and Conditions for Oklahoma ("STC"), which the OCC had allowed to take effect.

Southwestern Bell's application garnered the support of the OCC. Fulfilling its consultative role pursuant to section 271(d)(2), the OCC conducted proceedings lasting several months to investigate Southwestern Bell's application. The OCC then advised the FCC that both its extensive investigation into Southwestern Bell's application and its on-site experience implementing the 1996 Act in Oklahoma — including Southwestern Bell's successful negotiations with competitors and the absence of formal complaints from CLECs — showed that Southwestern Bell was in compliance with the requirements of the competitive checklist.[4] The

3. See Oklahoma Order, 12 FCC Rcd at 8721, ¶ 62. Consistent with the Commission's practice, we use the term "CLECs" to refer to both potential and actual competitors. See id. at 8705, ¶ 35.

4. Comments of the Oklahoma Corporation Commission at 8, Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-

OCC also observed that no party had ever claimed it was unable to obtain a required checklist element from Southwestern Bell after making a request. Id. Rather, arguments against Southwestern Bell's checklist compliance rested upon speculative objections by companies (specifically including AT&T, MCI, and Sprint) that had never attempted to order checklist items in Oklahoma. Id. These objections, the OCC found, would be properly resolved through arbitration or requests for enforcement of interconnection agreements. Id. at 8-10; see also Concurring Statement of Chairman Graves at 2-3.

The OCC thus concluded that the then-limited nature of local competition in Oklahoma reflected competitors' "internal business plans and operations, not . . . the unavailability of [checklist] items from [Southwestern Bell]." OCC 1997 Comments at 8. Beyond this, the OCC determined that approval of Southwestern Bell's section 271 application would benefit the people of Oklahoma not only by intensifying interLATA competition, but also by pushing competitors to speed their entry into the local telephone business. Id. at 10-11. The OCC "specifically reject[ed]" the argument that Southwestern Bell's compliance with local competition requirements of the 1996 Act would best be assured by delaying its participation in long distance. Id. This approach, the OCC stated, "would unnecessarily delay or deprive Oklahoma telephone consumers of an additional choice with respect to their long distance service" as well as foreclose "the best and quickest way" to interest the major long distance carriers and others in providing local service in Oklahoma. Id.

Region, InterLATA Services in Oklahoma, CC Docket No. 97-121 (FCC filed May 1, 1997) ("OCC 1997 Comments").

When it considered the application, the FCC did not question that entry by Southwestern Bell into interLATA services in Oklahoma would lower long distance prices. Indeed, then-Chairman Hundt specifically recognized that "the entry into the long distance market by [Southwestern Bell] . . . would promote competition and benefit consumers." Separate Statement of Chairman Reed E. Hundt at 1, appended to Oklahoma Order, 12 FCC Rcd at 8728. The FCC also did not address whether the local market in Oklahoma was open to competitors. Instead, the FCC held that Southwestern Bell was ineligible to have the merits of its application considered because CLECs' failure to enter the local market in Oklahoma had foreclosed Southwestern Bell from relying on either "Track A" or "Track B."

The FCC first ruled that Southwestern Bell was not eligible to file under Track A. It found that Brooks was not a "competing provider of telephone exchange service to residential . . . subscribers" because Brooks' four employee-customers did not pay a fee for their service and Brooks had indicated that it would not accept requests from the general public for residential service. Oklahoma Order, 12 FCC Rcd at 8696-97, ¶¶ 17-18. Then, the FCC held that Southwestern Bell also could not file for interLATA relief under Track B because it had received requests from companies — principally Brooks and Cox Communications ("Cox") — that had "expressed their intent" to provide facilities-based service to business and residential customers in Oklahoma. Id. at 8721-22, ¶¶ 62-64. Section 271, the FCC concluded, allowed these requesting carriers a "'ramp-up' period . . . to become operational competitors" before Southwestern Bell could apply for interLATA relief. Id. at 8710, ¶ 44.

Regardless of the correctness of the Oklahoma Order, the concerns voiced during the Commission's consideration of Southwestern Bell's first application have been swept away in the last year. Brooks is no longer serving a handful of business customers or "testing" its residential offerings. As explained in Part I, below, Brooks has won thousands of lines from Southwestern Bell and is serving them over its own fiber-optic network and by using unbundled network elements ("UNEs") obtained from Southwestern Bell, as well as through resale. Although it markets its services almost exclusively to more profitable business customers, Brooks likewise has commenced providing commercial residential service, to which at least seven of Southwestern Bell's own employees have subscribed.

Nor can it now be argued that CLECs in Oklahoma need a greater "ramp-up" period than the two years they already have had under the 1996 Act.[5] If the FCC was not convinced in 1997 that competitors could enter the local market in Oklahoma in whatever manner suits their own business plans, there is indisputable proof today. Part II of this Brief discusses Southwestern Bell's checklist offerings in detail. Southwestern Bell's provision of checklist items in Oklahoma and elsewhere also is quantified in Schedule 4 to the Affidavit of Michael G.

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5. That is not to say that every carrier that ultimately will enter the local market in Oklahoma is in it today. To the contrary, carriers are staying out of the market when their business plans dictate. AT&T, for example, has challenged in federal court the OCC's inclusion of an implementation schedule for AT&T to provide service in the Southwestern Bell/AT&T interconnection agreement, see Cleek Aff. ¶ 14, even though inclusion of such implementation schedules is directly authorized by 47 U.S.C. § 252(c)(3) and has been encouraged by the FCC. See Oklahoma Order, 12 FCC Rcd at 8706, ¶ 37 n.109; see also Memorandum Report and Order, Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, FCC 97-418, ¶ 64 n.171 (rel. Dec. 24, 1997) ("South Carolina Order").

Auinbauh (App. A, Tab __). As shown on that chart and further explained in the confidential Affidavit of George R. Elizondo, eight different CLECs provide resold local service in Oklahoma, serving nearly 1700 residential lines and more than 7200 business lines in the state. Southwestern Bell is furnishing 6500 interconnection trunks to Brooks, Dobson Communications Corporation, Cox Communications, and other CLECs in Oklahoma for their facilities-based service. More than a dozen physical collocations are in place in Oklahoma, and Southwestern Bell has ported 5500 numbers to facilities-based CLECs. CLECs are ordering and receiving on a daily basis UNEs, database access, space on Southwestern Bell's poles and in its conduits, reciprocal compensation payments, 911 and E911 services, and other facilities and services they may need to enter the local telephone business.

CLECs are placing orders with Southwestern Bell through operations support systems ("OSS") interfaces that are the most advanced in the industry. These interfaces permit CLECs to use the very same electronic systems as Southwestern Bell retail service personnel, or other electronic or manual systems that are particularly suited to the CLECs' needs. <u>See generally</u> Ham Aff. Indeed, using these OSSs, Southwestern Bell processed almost three-quarters of a million electronic and manual service orders received from CLECs in Oklahoma, Arkansas, Kansas, Missouri, and Texas in 1997, without backlogs. Auinbauh Aff. Sched. 4; <u>see</u> Lowrance Aff. ¶¶ 5, 17, 19.

Finally, Southwestern Bell has negotiated with AT&T, MCI, and the United States Department of Justice, and has incorporated into its interconnection agreements and STC, performance measurements that will allow CLECs and regulators to confirm that Southwestern

Bell is providing local facilities and services on a nondiscriminatory basis. See generally Dysart Aff. These measurements are backed by self-executing penalty provisions, whereby CLECs will be compensated for deficiencies in Southwestern Bell's performance if they occur, without having to seek relief from regulators or the courts.

Part III of this Brief confirms that Southwestern Bell will abide by the structural and non-structural safeguards of section 272, as well as the Commission's implementing regulations. Part IV demonstrates that approving this application is consistent with the public interest, convenience, and necessity and, indeed, is required to bring ordinary long distance customers in Oklahoma the full benefits of competition.[6]

I. SOUTHWESTERN BELL SATISFIES THE REQUIREMENTS OF SECTION 271(c)(1) IN OKLAHOMA

Southwestern Bell has negotiated successfully with numerous carriers to facilitate their entry into the local telephone business in Oklahoma. The fruits of these negotiations are Southwestern Bell's 32 agreements with requesting wireline CLECs in Oklahoma, in addition to another 7 agreements with competing wireless providers. Cleek Aff. ¶ 11 & Sched. 1. While all of these agreements afford CLECs access to everything they need to enter the local telephone business in accordance with their own business plans, 11 of the agreements include specific provisions concerning the CLEC's entry as a facilities-based carrier. Id. Sched. 1. The OCC has

6. [The Anti-Drug Abuse Act certifications required under 47 C.F.R. § 1.2002 are provided as Exhibit 1 to this Brief. Southwestern Bell has, in addition, complied with the Commission's pre-filing consultation requirements. All parties had an opportunity to comment upon a draft of this application during proceedings conducted by the OCC. Southwestern Bell has consistently attempted, in those proceedings, in its interconnection negotiations, and elsewhere, to resolve disputed issues pertaining to the competitive checklist and other relevant matters.]

approved 18 of Southwestern Bell's agreements with wireline CLECs under section 252, including 10 agreements that contemplate the CLEC's provision of facilities-based local service. Id. The OCC also has concluded an arbitration requested by AT&T; all other carriers have been able to resolve their negotiating differences with Southwestern Bell without the need for intervention by the state commission. See Cleek Aff. ¶¶ 12-13.

For purposes of satisfying section 271(c)(1), Southwestern Bell relies chiefly upon its implementation of the OCC-approved interconnection agreement with Brooks. Circumstances have changed dramatically since the Commission found, in June 1997, that Southwestern Bell did not satisfy Track A because Brooks was not at that time a "competing provider of telephone exchange service to residential . . . subscribers." See Oklahoma Order, 12 FCC Rcd at 8696-97, ¶¶ 17-18. Brooks is today filling residential orders on a routine commercial basis in Oklahoma, in addition to serving thousands of business lines over its own facilities and hundreds more business lines through resale.

The following facts about Brooks' operations in Oklahoma were undisputed in the proceedings to consider Southwestern Bell's initial section 271 application and remain true today:

- Brooks has received authority from the OCC to "operate as a competitive local exchange company . . . , providing all types of intrastate switched services, including switched local exchange (i.e., dial-tone) service," in Oklahoma. Id. at 8689, ¶ 7.

- Brooks has "an effective local exchange tariff in place for the provision of residential and business services." Id. at 8689-90, ¶ 7; see Elizondo Aff. ¶ 19.

- Brooks provides local exchange service to Oklahoma businesses in Tulsa and Oklahoma City exclusively over its own facilities, which include switches and approximately 250 route miles of fiber-optic cable.[7]

- At the time Southwestern Bell filed its first application, Brooks was providing service to the residences of four of its own employees at no charge by reselling Southwestern Bell's retail service. Oklahoma Order, 12 FCC Rcd at 8689-90, ¶ 7.

Although the OCC concluded in 1997 that Southwestern Bell satisfied the requirements of section 271(c)(1)(A), Oklahoma Order, 12 FCC Rcd at 8695, ¶ 15, the FCC held that Brooks' residential service did not satisfy Track A for three reasons. First, the Commission ruled that Brooks was not a "competing provider" of residential service because Brooks had characterized its residential service as a "test" confined to employee-customers. Id. at 8696, ¶ 17. Second, the Commission held that, even if Brooks did offer service to the general public, its residential service was not "telephone exchange service" provided to "subscribers" because Brooks' four employee-customers did not make monetary payments for their service. See id. Third, the Commission held that, even if Brooks was required under Oklahoma law to provide residential

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7. See Elizondo Aff. ¶¶ 30, 33-34. In its prior Order, the Commission noted that "[a]s of March 11, 1997, Brooks was serving twenty business customers in Oklahoma. Of these twenty business customers, one received service via resold SBC ISDN service, while the others received service either via direct on-net connections to Brooks' fiber optic transmission rings or through leased SBC dedicated T-1 facilities." Oklahoma Order, 12 FCC Rcd at 8690, ¶ 7 (footnote omitted). The Commission has since indicated that facilities obtained on an unbundled or equivalent basis from Southwestern Bell would count as Brooks' own facilities for purposes of Track A. See Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, FCC 97-298, ¶¶ 94-95 (rel. Aug. 19, 1997) ("Michigan Order").

service to the general public, that was not conclusive because Brooks could have refused to comply. See id. at 8698, ¶ 20.

Each of the deficiencies the FCC previously found with Southwestern Bell's satisfaction of Track A has been cured. Having been in the local market in Oklahoma for more than a year, and having successfully ordered interconnection trunks, collocation, ported numbers, unbundled loops, resold lines, and other services and facilities from Southwestern Bell, see Elizondo Aff. ¶ 29, Brooks is well past the point of needing to "test" its ability to furnish local residential service. Following the FCC's proceeding last spring, the OCC undertook to ensure that Brooks would fulfill its tariff obligations and prior commitments to serve residential customers. See Cleek Aff. ¶ 14. As a result, Brooks sent a letter to the OCC in September 1997, in which it formally committed to accept orders for residential service within its Oklahoma service areas. Elizondo Aff. ¶ 31. Brooks then placed a newspaper advertisement stating it would offer "basic residential service" in Oklahoma as of October 31, 1997. Id. & Attach. C at 3. To verify that Brooks was in fact willing and able to provide local residential service in Oklahoma, seven Southwestern Bell employees called Brooks and requested local service. The employees have successfully obtained basic residential service from Brooks and are receiving this service on a paying basis today. Id. ¶¶ 31-32 & Attach. E. Southwestern Bell currently provides Brooks with a small number of residential lines for resale, as well as with dozens of unbundled loops that could be used for facilities-based business or residential service. Id. ¶¶ 28-29.

Although Brooks is not yet a major residential carrier in Oklahoma, that is due solely to Brooks' own preference for serving more profitable businesses. Despite the OCC's efforts to